



Comptroller General
of the United States

430206

Washington, D.C. 20548

Decision

Matter of: Wu & Associates, Inc.--Reconsideration

File: B-255855.2

Date: June 20, 1994

DECISION

Wu & Associates, Inc. requests that we reconsider our January 6, 1994, dismissal of its protest under request for proposals (RFP) No. N62472-89-R-0054. The RFP was issued as a competitive small disadvantaged business (SDB) set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. IV 1992),¹ by the Department of the Navy for modernization and repair services of family housing at the Naval Air Warfare Center, Warminster, Pennsylvania.

We deny the request.

In its initial protest, Wu contended that R.I. Williams & Associates, Inc./Tri-State Design Construction, Inc., a joint venture, was not eligible to receive an 8(a) award--notwithstanding SBA's eligibility determination--because Williams, the 8(a) member of the joint venture, does not have the applicable Standard Industrial Classification (SIC) code in its approved business plan, as required by the solicitation. Wu also alleged that Williams/Tri-State certified in bad faith that it was eligible for award.

In our decision dismissing the protest, we concluded that our Office lacks jurisdiction to consider the protester's allegations. With respect to the challenge to the joint venture's eligibility, we explained that SBA is the sole arbiter in determining section 8(a) program eligibility, which is based in part on its consideration of whether the firm's approved business plan contains the applicable

¹Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.805 and 13 C.F.R. § 124.311 (1994) provide for and govern competitively awarded contracts set aside for section 8(a) qualified concerns. Macro Serv. Sys., Inc., B-245103; B-245103.2, Feb. 9, 1992, 92-1 CPD ¶ 200.

SIC code, see FAR § 19.805-2(c); its determinations cannot be challenged by a program participant or any other party. See 13 C.F.R. § 124.311(g).

We also concluded that the protester's other argument--that the awardee's alleged misrepresentation about its business plan rendered the firm "automatically subject to disqualification from any further participation in the procurement"--was in essence a request that our Office review and overrule SBA's determination that the awardee was in fact eligible to receive the award. FAR § 19.805-2(e) specifically provides that a party with information concerning the eligibility of an 8(a) firm must submit such information to SBA rather than challenging SBA's determination. SBA must then review whether the firm is eligible if--based on information alleging ineligibility--it believes that the firm no longer meets the 8(a) eligibility criteria. 13 C.F.R. § 124.111(d).

In its request for reconsideration, Wu does not challenge the determination that we lack jurisdiction to consider an 8(a) eligibility protest. Rather, Wu argues that our decision was based on the erroneous conclusion that the SBA's certification that the joint venture was eligible to receive the 8(a) award cured the alleged misrepresentation about its business plan. Wu maintains--as it did in its original protest--that the alleged misrepresentation tainted the awardee's proposal and, thus, rendered the joint venture ineligible to receive an award. To support its position the protester for the first time cites the Small Business Act, 15 U.S.C. § 645(d), which in pertinent part provides that whoever misrepresents the status of a business as a small business or an SDB shall be ineligible for participation in any program or activity conducted under the Act.

The protester incorrectly claims that we concluded that SBA's determination that the joint venture was eligible "cured" the awardee's alleged misrepresentation. Since the Navy advised SBA of the applicable SIC code for the procurement, and SBA's eligibility determination is based in part on consideration of whether the firm's approved business plan contains the applicable SIC code, see FAR § 19.805-2(c), SBA obviously did not find any alleged misrepresentation about the awardee's business plan.

In this connection, we understand that while the solicitation identified the applicable SIC code as 1522, which is "General Contractors - Residential Buildings, Other Than Single Family," the Navy and the SBA initiated the section 8(a) procurement on the understanding that the applicable SIC code was 1521, "General Contractors - Single Family Houses." See 13 C.F.R. § 121.601. We further understand that in anticipation of this procurement both

Williams and Wu had their business plans amended to include SIC code 1521 and that neither company has SIC code 1522 in its approved business plan, and that throughout this procurement the SBA considered SIC code 1521 to be the applicable code.

Under the circumstances, we see no basis for reconsidering our dismissal. The request for reconsideration is denied.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the printed name and title.

Ronald Berger
Associate General Counsel